

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Gresham Communications, Inc.	)	File Number EB-02-AT-326
	)	
Owner of Antenna Structure located at 32° 52' 52"	)	NAL/Acct. No.200332480005
North Latitude by 80° 41' 24" West Longitude in	)	
Walterboro, South Carolina	)	FRN 0007-7826-38
	)	
Charleston, South Carolina	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: October 30, 2002**

By the Enforcement Bureau, Atlanta Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Gresham Communications, Inc. ("Gresham"), owner of the antenna structure located at coordinates 32° 52' 52" North Latitude and 80° 41' 24" West Longitude, in Walterboro, South Carolina, willfully and repeatedly violated Sections 17.4(a), and 17.51 of the Commission's Rules ("Rules")<sup>1</sup> by failing to register its antenna structure with the Commission and failing to exhibit prescribed antenna structure lighting. We find Gresham apparently liable for forfeiture in the amount of thirteen thousand dollars (\$13,000).

**II. BACKGROUND**

2. On May 5, 2000, the Commission's Atlanta Field Office ("Atlanta Office") issued a Notice of Violation ("NOV") to William Saunders, Gresham's owner, citing the following violations regarding Gresham's antenna structure in Walterboro, South Carolina: failure to register the antenna structure in the owner's name, failure to exhibit prescribed antenna structure lighting, and failure to notify the Federal Aviation Administration ("FAA") of a light outage on the structure. Mr. Saunders replied to the NOV stating that the light outage had been repaired and provided a copy of an application for registration of the antenna structure which he stated was filed June 19, 2000. There is no record of an Antenna Structure Registration ("ASR") number issued to Mr. Saunders or Gresham for that structure.

3. On the evenings of September 18 and 19, 2002, in response to a complaint of a light outage

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<sup>1</sup> 47 C.F.R. §§ 17.4(a) and 17.51.

occurring for the past two years, an agent of the Atlanta Office observed the antenna structure located at 32° 52' 52" North Latitude and 80° 41' 24" West Longitude, in Walterboro, South Carolina. The agent verified that the top beacon was extinguished on both evenings between local sunset and sunrise. The agent contacted the FAA Flight Service Station and determined that no light outage for that structure had been reported.

4. The FCC ASR database showed the registered owner of the structure to be John Pembroke. The agent contacted Mr. Pembroke's widow who stated that Mr. Pembroke had not owned the tower but had leased it from Gresham who owned the tower. M. Scott Johnson, Gresham's Washington counsel, stated that William Saunders owned Gresham, that Gresham owned the antenna structure, and that Gresham was unaware of any light outage but would notify the FAA of the outage. Records from the county tax assessor verified that Gresham paid taxes on the structure and the land surrounding it.

### III. DISCUSSION

5. Section 17.4(a) of the Rules provides that, effective July 1, 1996, owners of any existing antenna structures that require notification to the FAA must register the structure with the Commission. Section 17.4(a)(2) of the Rules provides that, effective July 1, 1998, owners of an antenna structure that had been assigned painting or lighting requirements prior to July 1, 1996, must register the structure with the Commission. Gresham's antenna structure required notification to the FAA because the structure exceeded 200 feet in height.<sup>2</sup> Therefore, Gresham's antenna structure required Commission registration. From at least May 5, 2000, to September 19, 2002, Gresham failed to register its antenna structure with the Commission.

6. Section 17.51 of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise. FAA specifications for Gresham's antenna structure require the structure to be painted and exhibit red obstruction lights at night. On September 18 and 19, 2002, Gresham failed to exhibit the required red obstruction lighting on its antenna structure between sunset and sunrise. In addition, Gresham failed to notify the FAA of the light outage.<sup>3</sup>

7. Based on the evidence before us, we find that Gresham willfully<sup>4</sup> and repeatedly<sup>5</sup> violated Sections 17.4(a) and 17.51 of the Rules by failing to register its antenna structure with the Commission and failing to exhibit required antenna structure lighting.

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<sup>2</sup> See 47 C.F.R. § 17.7(a).

<sup>3</sup> Antenna structure owners must immediately notify the FAA of any known improper functioning of antenna structure top or flashing lights that cannot be corrected within 30 minutes. See 47 C.F.R. § 17.48(a).

<sup>4</sup> Section 312(f)(1) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

8. Pursuant to Section 1.80(b)(4) of the Commission's Rules,<sup>6</sup> the base forfeiture amounts for the violations cited in this NAL are \$3,000 for failure to register an antenna structure (failure to file required forms or information) and \$10,000 for failure to comply with prescribed lighting. Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"),<sup>7</sup> requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require." Considering the record as a whole and the statutory factors listed above, this case warrants a forfeiture in the amount of \$13,000.

#### **IV. ORDERING CLAUSES**

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>8</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,<sup>9</sup> Gresham Communications, Inc. is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for repeatedly and willfully violating Sections 17.4(a) and 17.51 of the Commission's Rules by failing to register its antenna structure and failing to maintain prescribed lighting.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NAL, Gresham Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>10</sup>

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.

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<sup>6</sup> 47 C.F.R. § 1.80(b)(4).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>10</sup> See 47 C.F.R. § 1.1914.

Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in the Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 5039b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202)418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Gresham Communications, Inc., P.O. Box 30999; Charleston, SC 29407; and an additional shall be sent by regular mail and Certified Mail Return Receipt Requested to Gresham's attorney, M. Scott Johnson, 1301 K Street, NW, Suite 900 East Tower, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce  
District Director  
Atlanta Office

Attachment A